

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
*Newport News Division***

JOANN WRIGHT HAYSBERT,

Plaintiff,

v.

Civil Action No.: 4:24-CV-87

**OUTBACK STEAKHOUSE OF
FLORIDA, LLC, AND
BLOOMIN' BRANDS, INC. et al.,**

Defendants.

MOTION TO RECONSIDER ORDER EXCLUDING PLAINTIFF'S EXPERT WITNESS

COMES NOW plaintiff Joann Wright Haysbert ("Plaintiff"), by counsel, pursuant to Fed. R. Civ. P. 54(b), and moves for the Court to reconsider and modify its interlocutory orders excluding Plaintiff's designated expert witness Aaron Filler, M.D. ("Dr. Filler")(ECF 41 and 42).

1. On January 16, 2025, the Court conducted final pretrial conference and hearings on defendants Bloomin' Brands, Inc. and Outback Steakhouse of Florida, LLC's (collectively "Defendants")¹ Motions in Limine (ECF 32) and Objections to Plaintiff's Supplemental Reports (ECF 36).

2. At the conclusion of the January 16, 2025, hearing, the Court orally ruled in favor of Defendants' various motions and objections and excluded Dr. Filler as a witness from the upcoming trial as a sanction against Plaintiff under Fed. R. Civ. P. 37(c)(1) for failure to timely supplement Plaintiff's prior expert witness designations. The Court subsequently entered the final

¹ Bloomin' Brands, Inc. was dismissed as a party effective January 24, 2025. Plaintiff uses the plural "Defendants" for convenience and consistency, but as context dictates such term shall apply to the singular remaining defendant Outback Steakhouse of Florida, LLC.

Pretrial Order (ECF 41) and a separate Order on Motions in Limine (ECF 42) confirming and effecting the Court's oral ruling.

3. For the reasons argued at the January 16, 2025, hearing, as contained in Plaintiffs' prior pleadings, and as otherwise set forth in the Memorandum of Support of this Motion, Plaintiff respectfully avers that the foregoing sanctions were unduly harsh and not commensurate with the violation which the Court found Plaintiff to have committed. Plaintiff further asserts that, in context of the circumstances, if such sanctions are not modified, they will work a manifest injustice and will functionally deprive Plaintiff of fundamental due process and her right to bring her claims to the Court and jury for adjudication on the merits.

4. Plaintiff specifically asks the Court to reconsider the portions of the foregoing rulings and Orders which exclude Dr. Filler entirely and ask the Court to instead modify the sanctions to exclude only the evidence and opinions which were not timely disclosed (specifically matters contained in a January 3, 2024, new patient evaluation prepared by Dr. Filler). In the alternative, Plaintiff asks that in lieu of live testimony the Court admit Dr. Filler's prior testimony before this Court and an empaneled jury on August 10, 2023, in associated case *Haysbert v. Outback Steakhouse of Florida, LLC*, 4:20-cv-00121-RBS-RJK.

WHEREFORE, your plaintiff Joann Wright Haysbert, respectfully requests that this Court grant reconsideration of its issuance of sanctions, and that the Court modify the same to exclude only the substance of the January 3, 2024 Evaluation Report itself, and to otherwise permit Dr. Filler to testify and/or to admit his previous testimony.

Respectfully submitted,

Date: January 29, 2025

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CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of January 2025, I will electronically file the foregoing with the Clerk of Court using the CM/EMF system, which will send a notification of such filing (NEF) to all counsel of record, including:

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